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E-filing

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EMC

AMERICAN SMALL BUSINESS LEAGUE

Plaintiff,

v.

UNITED STATES DEPARTMENT OF THE
ARMY

Defendant.

CV11

0955

CASE NO.

COMPLAINT FOR INJUNCTIVE
RELIEF

FREEDOM OF INFORMATION ACT
(5 U.S.C. 552 (a)(3)(A))

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, ("FOIA") for injunctive and other appropriate relief to compel the disclosure and release of documents improperly withheld from Plaintiff by the Department of the Army.

JURISDICTION AND VENUE

2. This court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

THE PARTIES

3. Plaintiff is the American Small Business League ("ASBL"), an organization incorporated in California which has its principal place of business in Sonoma County, California. ASBL is a national organization established to research and focus public attention on emerging small business issues and to otherwise promote the interests of small businesses. ASBL's activities include the review of evolving federal and state government policy and procedures to determine possible impact on small business. .

4. Defendant Department of the Army (hereinafter "Army") is an "agency" within the meaning of 5 U.S.C. § 552 (f).

PLAINTIFF'S FOIA REQUEST AND THE ARMY'S RESPONSE

5. On or about June 2, 2010 pursuant to the Freedom of Information Act ("FOIA"), ASBL requested records from Army consisting of "The Individual Subcontracting Report (ISR/SF 294) for the contract with PIID 0005IDVPIIDAAA0902DOO25 to Bechtel National Inc., DUNS 089176176, and the most recent Summary Subcontracting Report (SSR/SF 295) Bechtel National, Inc. DUNS 089176176". A true and correct copy of the request is attached hereto as Exhibit "A".

6. On or about June 10, 2010, ASBL receive a letter from Army regarding ASBL's FOIA request in which Army acknowledged receipt of the request. A true and correct copy of Army's June 10th letter is attached hereto as Exhibit "B"

7. Following its acknowledgement of the request on June 10, 2010, Army failed to provide any further response to ASBL's FOIA request within the time afforded by law. On August 4, 2010 ASBL appealed Army's non- response to its FOIA request. A true and correct copy of ASBL's Appeal is attached here as exhibit "C"

8. On September 23, 2010 ASBL again wrote to Army, stating that it had not received a response to initial FOIA request, or ASBL's subsequent August 4th Appeal. A true and correct copy of ASBL's September 23, 2010 letter is attached here as exhibit "D"

9. Army did not respond to ASBL's FOIA request or the Appeal in the time allowed by FOIA, nor has it responded at all.

10. ASBL has a right of access to the documents requested pursuant to 5 U.S.C. § 552 (a)(3), and there is no legal basis for the Army's denial of such access.

Accordingly, ASBL seeks an order from this court compelling the Army to provide the requested information.

CAUSE OF ACTION

Violation of the Freedom of Information Act for Wrongful Withholding of Agency Records

11. The Army has wrongfully withheld documents requested by ASBL.

12. ASBL has exhausted the administrative remedies with respect to the Army's wrongful withholding of the requested documents.

13. ASBL is entitled to injunctive relief and an order from this Court compelling an immediate release and disclosure of the requested documents.

PRAYER FOR RELIEF

WHEREFORE, ASBL prays that this Court:

- A. Issue an order compelling Army to disclose all responsive documents in their entirety;
- B. Provide for expeditious proceedings in this action;
- C. Award ASBL its costs and reasonable attorneys' fees incurred in this action;
- and
- D. Grant such other relief as the Court may deem just and proper.

Dated: February 25, 2011

GUTIERREZ & ASSOCIATES


By: 
ROBERT E. BELSHAW
Attorneys for Plaintiff

Exhibit A

Kevin Baron

From: Kevin Baron
Sent: Wednesday, June 02, 2010 11:19 AM
To: 'DAFOIA@conus.army.mil'
Subject: Freedom of Information Act Request
June 2, 2010

Department of the Army
Freedom of Information Act Office
7701 Telegraph Road, Suite 144
Alexandria, VA 22315-3905

Re: Freedom of Information Act Request

Dear FOIA Officer:

This is a request under the Freedom of Information Act. I request that a copy of documents containing the following information be provided to me:

- The Individual Subcontracting Report (ISR/SF 294) for the contract with PIID 0005, IDVPIID DAAA0902D0025 to Bechtel National, Inc., DUNS 089176176, and the most recent Summary Subcontracting Report (SSR/SF 295) Bechtel National, Inc., DUNS 089176176.

In order to help to determine my status for purposes of determining the applicability of any fees, you should know that I am the Director of Government Affairs for a small business advocacy group and am seeking information for use in our group's research and not for commercial use.

The American Small Business League is willing to pay fees for this request up to a maximum of \$200.00. If you estimate that the fees will exceed this limit, please inform me first.

I have included a telephone number at which I can be contacted during the hours of 8 a.m. to 5 p.m. Pacific, if necessary to discuss any aspect of my request.

Thank you for your consideration of this request.

Sincerely,
Kevin Baron

Kevin Baron, Director of Government Affairs
American Small Business League
3910 Cypress Dr.
Petaluma CA, 94954
(707) 789-9575

6/2/2010

A

Exhibit B

8945



DEPARTMENT OF THE ARMY
FREEDOM OF INFORMATION AND PRIVACY DIVISION
7701 TELEGRAPH ROAD, SUITE 144
ALEXANDRIA, VA 22315-3805
June 10, 2010

U.S. Army Freedom of Information
Act Office (FOIA 10-0848)

Mr. Kevin Baron
American Small Business League
3910 Cypress Drive
Petaluma, CA 94954

Dear Mr. Baron:

This is in response to your Freedom of Information Act (FOIA) request June 2, 2010, for a copy of information pertaining to contract DAAA0902D0025. Your request was received in this office on June 2, 2010. Your request is being processed in accordance with Title 5 United States Code 552, The Freedom of Information Act.

Please be advised that this office serves as the referral point and policy office for the Department of the Army Freedom of Information and Privacy Act entities and is not a repository for documents maintained by the Department of the Army. Requests for information and documents under the purview of the Army are referred to the proponent agency for appropriate handling, and the proponent of the requested records in accordance with Army Regulation 25-55, The Army Freedom of Information Act Program.

Your request was forwarded to the agency listed below for a direct response back to you.

U.S. Army Garrison
Rock Island Arsenal
Office of General Counsel
2nd Floor Room 27
Rock Island, IL 61299-5000

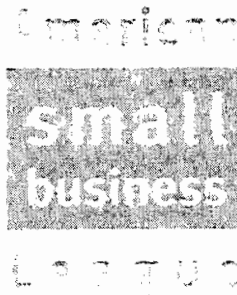
If you have any questions regarding the status of your request, you should contact the agency listed above.

Sincerely,

//signed//
Barbara Garris
Program Analyst
U.S. Army Freedom of
Information Act Office

B

Exhibit C



98% of all U.S. firms have less than 100 employees

August 4, 2010

Office of the General Counsel
104 Army Pentagon, RM 3C546
Washington, DC 20310-0104

Re: Freedom of Information Act Appeal

Re: FOIA No. 10-0848

Dear FOIA Officer:

This is an appeal under the Freedom of Information Act. On June 2, 2010, I requested that a copy of documents containing the following information be provided to me:

- The Individual Subcontracting Report (ISR/SF 294) for the contract with PIID 0005, IDVPIID DAAA0902D0025 to Bechtel National, Inc., DUNS 089176176, and the most recent Summary Subcontracting Report (SSR/SF 295) Bechtel National, Inc., DUNS 089176176.

I received a letter from Ms. Barbara Garriss, dated June 10, 2010, informing me that my request had been received and forwarded to the U.S. Army Garrison, Rock Island Arsenal. To date, I have not received a response from the Rock Island Arsenal nor the information being requested; therefore I am appealing the request.

Thank you for your consideration of this appeal.

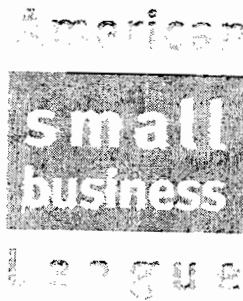
Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Baron".

Kevin Baron, Director of Government Affairs
American Small Business League

Exhibit D

8105



98% of all U.S. firms have less than 100 employees

September 23, 2010

Office of the General Counsel
104 Army Pentagon, RM 3C546
Washington, DC 20310-0104

Re: Freedom of Information Act Appeal

Re: FOIA No. 10-0848

Dear FOIA Officer:

This is an appeal under the Freedom of Information Act. On June 2, 2010, I requested that a copy of documents containing the following information be provided to me:

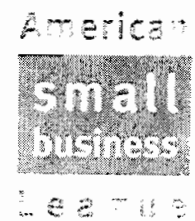
- The Individual Subcontracting Report (ISR/SF 294) for the contract with PIID 0005, IDVPIID DAAA0902D0025 to Bechtel National, Inc., DUNS 089176176, and the most recent Summary Subcontracting Report (SSR/SF 295) Bechtel National, Inc., DUNS 089176176.

I received a letter from Ms. Barbara Garris, dated June 10, 2010, informing me that my request had been received and forwarded to the U.S. Army Garrison, Rock Island Arsenal.

An appeal was filed, dated August 4, 2010, due to a lack of response and the fact that the statutory time had run out, and the documents requested had not been sent.

To date, I have not received a response from the Office of Appeals, the Rock Island Arsenal nor the information being requested; therefore I am appealing the request. At this point, due to a lack of response from the Army who has now had a reasonable amount of time with which to respond, I am informing you that I am giving you 15 business days to either deny the appeal or provide the requested documents.

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Thank you for your consideration of this appeal.

Sincerely,

A handwritten signature in black ink, appearing to be "KB" with a long, sweeping horizontal line extending to the right.

Kevin Baron, Director of Government Affairs
American Small Business League